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Foreword

*John A. Kennedy, Jr.**

The present issue of the *Case Western Reserve Journal of International Law* is concerned generally with foreign participation in the economy of Japan and particularly with a number of the legal and work-a-day practical aspects of such participation. Despite — or perhaps because of — the world energy problem, the uncertainties over raw material availabilities, and commonly shared nervousness about the course of various national economies, the articles in this issue deal with questions of immediate and continuing importance. Japan is a nation consisting of four major islands, with limited usable land space, a large population relative to usable land space, few natural resources, a distinctive culture, a long and often tumultuous history, a commendably high literacy rate, a productive labor force, and the third largest Gross National Product in the world. Given the nature of recognized money flows, either through trade or investment or services, it is obviously important for foreigners to understand the conduct of business by foreign interests in Japan.

From the standpoint of the observant foreigner, it is the usual cliché to perceive Japan as a nation of contradictions and contrasts. On the one hand, there is the extraordinary politeness and sensitivity of person-to-person relations with a clerk in a department store, and on the other, the extraordinary pushing, shoving, and general unpleasantness of a commuter train at rush hour; or the remarkable beauty of the garden of the Shugakuin Imperial Villa on the outskirts of Kyoto and the remarkable pollution in Yokkaichi; or the cultivation of what must be the smallest of living trees and shrubs, *mame-bonsai*, and the establishment of large steel-making works, such as the Nippon Kokan mill at Fukuyama.

From the viewpoint of the foreign businessman interested in participating in the evolution of the Japanese "Economic Miracle," however, it is more useful to perceive Japan as a nation of quite special consistency — homogeneity, a word often used in this con-

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text, is perhaps misleading. As Professor Henderson makes clear in his valuable study, *FOREIGN ENTERPRISE IN JAPAN*, reviewed in this issue of the *Journal*, the history of foreign participation in the Japanese economy has experienced four distinct phases. For present purposes, the most important phase for study is the period following the dynamic expansion of the Japanese economy after 1950. For purposes of perspective and reflection, the history of the Japanese economy following the arrival of Commodore Perry's famous "Black Ships," especially after the Meiji Restoration in 1868, and the unsuccessful extension of the Greater East Asia Co-Prosperity Sphere, is also instructive. In both periods, the notable capacity of the Japanese people as a nation, but through multifarious groups, public and private organizations, and methods, to achieve and also to work toward an improved standard of living and economic growth is apparent.

Today, Japan has probably one of the most open-minded policies toward foreign trade and investment among those industrialized countries which have attentively considered the implications of such trade and investment for their national economies and goals. It is, after all, only within the past few months that the United States has moved toward a serious consideration of the implications of foreign investment within the United States.¹ As a result of Japan's progressive dismantling of restrictions on foreign investment, it has been estimated that there are now more than 1,000 corporations operating in Japan with substantial foreign capital commitments. Of these investments, companies with a United States identity — legally, if not in the public eye — predominate. A study conducted by the Hakuhodo Study Group and commissioned by the Ministry of Foreign Affairs concluded that:

Among . . . foreign investments, the United States accounted for 62.5%, Europe for 27.5%, Canada for 2.1% and all other countries for 7.9%.²

These investments range from the photogenic operations of McDonald's Hamburgers establishment on the Ginza through the perhaps less visible Nihon Univac Kabushiki Kaisha.

Obviously, the post-War history of foreign investment in Japan has not always run smoothly. The Japanese seniority system of

¹ E.g., S.2840.

² Director-General of the Public Information Bureau, Ministry of Foreign Affairs (Japan), *KEYS TO SUCCESS—FOREIGN CAPITALIZED CORPORATIONS IN JAPAN*, at 1 (1973).

employment and promotion is hardly "on all fours" with foreign, especially Western, concepts of the merit system. For the successful conduct of business, good personal relationships are as important as the formal wording of a contract. And, as a perceptive observer of Japanese society has pointed out, the value system of the Japanese may be concerned with non-economic objectives, such as ranking, as much as with immediate corporate profits.³ These differences in social, personal, and corporate objectives and thinking of the Japanese and foreigners need not be incompatible or unworkable; but they should be recognized.

Japan, in short, is neither an island nation invested by junior American naval officers and charming humanoid butterflies, nor is it a government/corporate monopsony in search of economic growth, markets, and raw materials. It is various, complex, and in many ways importantly different from the societies in which foreign investors, or better, participants, have formed their perceptions. Its problems of pollution, housing, urbanization, life-style, and direction are immense; indeed, they have even been the subject of a best selling book written by Prime Minister Kakuei Tanaka,⁴ and are the subject of extensive comment and discussion. The intelligent survey of participation in the Japanese economy represented in the following articles should be evaluated, and appreciated, in terms of this unique society.

³ C. NAKANE, *JAPANESE SOCIETY* at 92 (1972).

⁴ K. TANAKA, *BUILDING A NEW JAPAN — A PLAN FOR THE JAPANESE ARCHIPELAGO* (1973).